93-1278 (4)

Supreme Court, U.S.
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No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

COUNTY OF BERKS, PENNSYLVANIA, et al.,
Petitioners

v.

MERRY J. MURTAGH, et al.,
Respondents

BRIEF OF AMICI CURIAE COMMONWEALTH OF PENNSYLVANIA, ARIZONA, MICHIGAN, NEW HAMPSHIRE, RHODE ISLAND, SOUTH CAROLINA AND TENNEESEE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTERESTS OF AMICUS CURIAE

The interest of the amici states in this case is the overriding necessity to maintain the fiscal integrity of the state and local governments and the efficient, expeditious, and non-disruptive resolution of state and local tax disputes. This Court has long recognized two unassailable and well established principles; first, that states and localities rely chiefly on their respective tax systems to obtain the means to carry on the business of government and that it is of paramount importance that courts exercise restraint in disturbing tax enforcement schemes, even when entertaining constitutional challenges; second, that constitutional challenges to the application and assessment of state and local taxes are

best resolved in the first instance by the fair, complete and adequate remedies provided by the state to resolve complex tax questions.

The decision of the Supreme Court of Pennsylvania in this case, allowing taxpayers bringing actions pursuant to 42 U.S.C. §1983 (§1983) to circumvent fair and complete state statutory remedies, flies in the face of these well settled principles. Left undisturbed, it could lead to the disruption of state and local revenue collection systems by allowing taxpayers through injunctive, damage and attorney fee actions, to either enjoin the collection of taxes or restrain tax officials from carrying out their enforcement responsibilities. It will further enable Pennsylvania taxpayers to ignore time honored statutory tax review

procedures, enacted to adjudicate complex state tax issues, by merely articulating in their state court complaint a constitutional challenge to the state tax system. It will have the concomitant result of depriving the state or local tax agency of an opportunity to rectify alleged improprieties in the enforcement of the tax law, and will open a floodgate of litigation by encouraging taxpayers to bring federal damage actions, <u>including attorney fee claims,</u> against state and local officials that are not otherwise available in federal court or to other similarly situated taxpayers in other states. The legal and fiscal interests of Pennsylvania and other amicus states in this matter cannot be overstated.

ARGUMENT

I. The Decision in this Case Conflicts with Decisions of Other State Courts of Last Resort.

The Petition for a Writ of Certiorari (Petition) at pp. 15-22 provides this Court with an extensive analysis as to how other state courts of last resort have resolved the question of whether taxpayers must first exhaust their plain, adequate and complete state statutory remedies prior to filing §1983 action in state court. No less than ten state courts of last resort (as well as two intermediate appellate courts) have concluded that they will not entertain such actions where taxpayers have failed to exhaust the prescribed state statutory remedies. This Court, in an equally divided opinion, affirmed the decision of one of these courts and, in three of the

cases, denied the taxpayers' petition for a writ of certiorari.[1] Conversely, three state courts of last resort have concluded, as did the Supreme Court of Pennsylvania herein, that a failure to exhaust the plain and adequate state statutory remedies does not deprive the state court of jurisdiction to entertain a §1983 action challenging a state's enforcement of its tax laws.[2]

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[1] Spencer v. South Carolina Tax Comm'n, 281 S.C. 492, 316 S.E.2d 386 (1984), aff'd by an equally divided court, 471 U.S. 82 (1985)(per curiam)(Powell, J., not participating); Hogan v. Musolf, 163 Wis.2d 1, 471 N.W.2d 216 (1991), cert. denied, 112 S. Ct. 867 (1992); Nutbrown v. Munn, 311 Or. 328, 811 P.2d 131 (1991), cert. denied, 112 S.Ct. 867 (1992); State v. Quill Corp., 500 N.W. 2d 196 (N.D.), cert. denied, 114 S.Ct. 173 (1993).

[2] In one of these cases, the state court reversed one of its prior decisions that had followed the majority exhaustion rule and in which this Court had denied the taxpayer's petition for certiorari. See Burrell v. Mississippi State Tax Comm'n, 536 So. 2d 848, 862-846 (Miss.

Recently, this conflict became even more apparent in the context of taxpayers' claims for attorney's fees pursuant to 42 U.S.C. §1988 (§1988), an issue that cannot be resolved without first addressing the question of whether a taxpayer may bring a §1983 suit without first exhausting the state's fair and adequate statutory remedies. On remand from this Court's decision in Quill Corp. v. North Dakota, 112 S.Ct. 1904 (1992) (wherein this Court upheld Quill's Commerce Clause claim against the state), the Supreme Court of North Dakota rejected Quill's request for §1988 attorneys' fees. The court concluded that since Quill could not have maintained a §1983 action in state court

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1988), reversing State Tax Comm'n v. Fondren, 387 So. 2d 712 (Miss. 1980), cert. denied, 450 U.S. 1040 (1981).

because of the existence of a plain, adequate and complete state statutory remedy, it had no choice but to reject Quill's demand for §1988 fees. This Court denied Quill's petition for certiorari. State v. Quill Corp, 500 N.W. 2d 196, 200-203 (N.D.), cert. denied, 114 S.Ct. 173 (1993).

Conversely, the Supreme Court of Tennessee awarded §1988 attorney's fees to a similarly situated mail order company that had also prevailed on its Commerce Clause action against the state. The court, citing much of the same precedent relied on by the Supreme Court of Pennsylvania in the instant case, concluded that a state may not frustrate the intent of §1988 by setting up state law exhaustion barriers to deprive prevailing parties under §1983 their

federal right to attorney fees. This Court denied both Tennessee's petition for certiorari and motion for rehearing. Bloomingdale's By Mail, Ltd. v. Huddleston, 848 S.W.2d 52 (Tenn. 1992), cert. denied, 113 S.Ct. 3002 (1993), reh'g. denied, 114 S.Ct. 15 (1993).

The existence of this direct conflict between state courts of last resort on the issue of §1988 attorney's fees further exacerbates the already existing conflict as it pertains to the underlying question of whether a state court may dismiss a §1983 challenge to a state or local taxation system where there exists a plain, adequate and complete statutory remedy. The point is simple -- left unresolved by this Court, the question of whether a taxpayer's federally based claim in state court must

be resolved in the first instance by the appropriate state tax review procedure, will continue to lead to differing outcomes depending on the particular state in which the action is brought, resulting in the non-uniform application of federal law. The amici states respectfully request that this Court resolve this conflict by granting the Petition.

II. The Supreme Court of Pennsylvania has Decided an Important Federal Question that Should be Resolved by this Court.

This Court has long recognized the significant and sensitive nature of state tax systems and the need for judicial restraint when deciding cases that affect such systems. Prior to the enactment of §1983, Justice Field wrote:

> It is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public.

Dows v. Chicago, 11 Wall. 108, 110 (1871).

Recognizing this overriding principle, prior to the enactment of the Tax Injunction Act, 28 U.S.C. §1341, this Court reaffirmed the need to restrain the exercise of judicial equitable power in state tax cases by striking down federal lawsuits seeking to enjoin the collection of state taxes where state statutory remedies had not been exhausted. Matthews v. Rogers, 284 U.S. 521 (1932);

Singer Sewing Machine Co. v. Benedict, 229 U.S. 481 (1913); Boise Artesian Water Co. v. Boise City, 213 U.S. 276 (1909).

Congress similarly recognized this imperative. By enacting the Tax Injunction Act, Congress intended to end

> [t]he existing practice of the Federal courts to entertain tax-injunction suits mak[ing] it possible for foreign corporations to withhold from a state and its governmental subdivisions taxes in such vast amounts and for such long periods as to disrupt state and county finances, and thus make it possible for such corporations to determine for themselves the amount of taxes they will pay.

81 Cong. Rec. 1416 (1937).

This court again affirmed these underlying principles when it chose in 1981 to extend the coverage of the Tax Injunction Act to bar §1983 damage

actions in federal court, where available state remedies had not been exhausted. Fair Assessment in Real Estate Assn. v. McNary , 454 U.S. 100 (1981). In recognizing that the threat of large damage actions, including suits for §1988 attorney fees, can just as easily inhibit state tax officials from carrying out their enforcement responsibilities as a court ordered injunction, this Court again emphasized the need for judicial non-interference with a state's effort to enforce its state tax laws.

> The special reasons justifying the policy of federal non-interference with state tax collection are obvious. The procedures for mass assessment and collection of state taxes and for administration and adjudication of taxpayer's disputes with tax officials are generally complex and necessarily designed to operate according to established rules. State tax agencies are

> organized to discharge their responsibilities in accordance with the state procedures. If federal declaratory relief were available to test state tax assessments, state tax administration might be thrown into disarray, and taxpayers might escape the ordinary procedural requirements imposed by state law. During the pendency of the federal suit the collection of revenue under the challenged law might be obstructed, with consequent damage to the State's budget, and perhaps a shift to the state of the risk of taxpayer insolvency. Moreover, federal constitutional issues are likely to turn on questions of state tax law, which, like issues of state regulatory law, are more properly heard in the state courts.

454 U.S. at 182, n. 6, quoting Perez v. Ledesma, 401 U.S. 82, 128, n.17 (1971) (Justice Brennan concurring in part and dissenting in part).[3]

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[3] This Court has previously shown great deference to state statutory remedies. See e.g. McKesson v. Division of Alcoholic Beverages 496 U.S. 18, 37 (1990) ("[a]llowing taxpayers to litigate their tax liabilities prior to payment

The overriding principles and justification in favor of preventing federal courts from interfering with state tax statutory schemes is no less applicable, nor less compelling, when such suits are brought in state court. A §1983 action brought in state court is no less a burden upon the state remedial scheme than a §1983 action brought in federal court. The Supreme Court of Pennsylvania's decision herein, allowing taxpayers to proceed in state court with a §1983 claim prior to exhausting state

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might threaten a government's financial security, both by creating unpredictable interim revenue shortfalls against which the State cannot easily prepare, and by making the ultimate collection of validly imposed taxes more difficult.") The circumvention of state remedial schemes permitted by the Pennsylvania Supreme Court in this instance conflicts with such cases. See also, Harper v. Virginia Department of Taxation, 509 U.S. , 125 L.Ed.2d 74, 113 S.Ct. 2511 (1993).

administrative tax remedies, will no less deprive local tax officials the opportunity to rectify alleged improprieties than if a federal district court reaches the same conclusion. It is no less disruptive of the state's internal economy and statutory tax procedures for a state court to act pursuant to §1983 and suspend the usual tax collection and refund procedures of the state, than it would be for a federal district court to do so. Moreover, irrespective of whether a federal court or a state court awards damages or attorney's fees to a taxpayer pursuant to the filing of a §1983 or §1988 action against state officials in their personal capacity, the result is still the same. As this Court observed in the Fair Assessment case,

> [t]here is little doubt that such officials, faced with the prospect of personal liability to numerous taxpayers, not to mention the assessment of attorneys fees under 42 U.S.C. §1988, would promptly cease the conduct found to have infringed petitioners' constitutional rights, whether or not those officials were acting in good faith. In short, petitioner's actions would in every practical sense operate to suspend collection of state taxes.

454 U.S. at 185.

Finally, the federal policy in favor of allowing states, even in the face of a §1983 challenge to its state tax system, to utilize its state remedial procedures to address complex tax questions (and perhaps avoid having to address the federal constitutional issue at all) is just as readily skirted when a state court, as opposed to a federal court, allows taxpayers to circumvent prescribed statutory remedies.

Simply put, many of the fears expressed by this Court and Congress with respect to a federal court infringing on a state tax system are present when that same federal cause of action is brought in state court. This Court simply cannot permit taxpayers, with the assistance of the state courts, to circumvent these compelling significant federal interests by merely taking the identical §1983 and §1988 complaint that would be unwelcome in federal court, and walking it down the block to the state courthouse.[4]

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[4] Any contention that the Fair Assessment decision and/or the Congressional intent underlying the Tax Injunction Act were based exclusively on concerns for federalism and comity principles, and are therefore inapplicable to state court §1983 actions, is belied by a thorough reading of both the Fair Assessment case and the legislative history of the act. In any event, as set forth in greater detail in our next section, the doctrine of comity would equally restrict a state court from interpreting a federal cause of action in

III. The Supreme Court of Pennsylvania has Decided a Federal Question in a Way that Conflicts with Applicable Decisions of this Court.

The Supreme Court of Pennsylvania in this case relied principally on three decisions of this Court to support its conclusion that state courts could not require taxpayers to avail themselves of fair and adequate statutory remedial procedures prior to lodging a §1983 action in state court: Patsy v. Board of Regents of Florida, 457 U.S. 496 (1982); Howlett v. Rose, 496 U.S. 356 (1990); and Felder v. Casey, 487 U.S. 131 (1988). In each of these cases, this Court struck

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a manner contrary to federal law principles. Finally, it bears emphasis that the issuance of the majority of this Court's decisions interpreting the Tax Injunction Act, as well as the enactment of the TIA itself, came at a time prior to this Court's holding in Maine v. Thiboutot, 448 U.S. 1 (1980), wherein this Court held that state courts had concurrent jurisdiction with federal courts to entertain §1983 claims.

down a state/municipality's attempt to impose state exhaustion requirements on plaintiffs seeking to assert a federal constitutional right pursuant to §1983.[5] Thus, in Felder, this Court held that

> [i]n enacting §1983, Congress entitled those deprived of their civil rights to recover full compensation from the government officials responsible for those deprivations. A state law that conditions that right of recovery upon compliance with a rule designed to minimize governmental liability, and

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[5] In Patsy, the defendant state university asserted that plaintiff had to exhaust the state university system's internal grievance procedure prior to bringing a §1983 case alleging race and sex discrimination. In Felder, this Court rejected a defendant municipality's argument that a plaintiff alleging a §1983 violation (arising out of a beating and arrest by local police officials) had to comply with the state's notice of claim limitation statute. In Howett, a Florida court refused to entertain a §1983 action brought by a former student against a county school board, based on state sovereign immunity grounds.

> that directs injured persons to seek redress in the first instance from the very targets of the federal legislation, is inconsistent in both purpose and effect with the remedial objectives of the federal Civil Rights Law. Principles of federalism, as well as the supremacy clause, dictate that such a state law must give way to vindication of the federal right when that right is asserted in state court.

487 U.S. at 153.

Moreover, after concluding generally in Patsy that exhaustion of an internal grievance procedure was not required as a precondition to bringing a §1983 action, this Court observed that congressional intent controls whether exhaustion is required.

> Legislative purpose is of paramount importance in the exhaustion context because Congress is vested with the power to prescribe the basic procedural scheme under which claims may be heard in federal courts. Of course, courts play

> an important role in determining the limits of an exhaustion requirement and may impose such a requirement even where Congress has not expressly so provided. However, the initial question whether exhaustion is required should be answered by reference to congressional intent; and the court should not defer the exercise of jurisdiction under a federal statute unless it is consistent with that intent.

457 U.S. at 501-502.

Read together, these cases stand for the simple proposition that any state procedural rule that has the effect of "minimizing government liability" -- and that is inconsistent with the federal remedy as intended by Congress -- cannot stand. Contrary to the Supreme Court of Pennsylvania's holding in the instant case, these cases do not purport to nullify all statutory procedural rules that might serve as an obstacle to vindicating a federal right, but only

those state rules that purport to limit the federal remedy in a way that it would not be limited if the same §1983 action was pursued in federal court.

Howlett and Felder make it clear that when state courts entertain federal causes of action "the elements of, and the defenses to, a federal cause of action are defined by federal law," so that the outcome of such actions will be the same, regardless if decided in a state or federal forum. Howlett 496 U.S. at 375 (emphasis supplied); Felder 479 U.S. at 2307 (striking down the state notice of claim law because it conflicted with federal law and "because its enforcement . . . will frequently and predictably produce different outcomes in §1983 litigation based solely on whether the claim is asserted in state or federal

court"). The holding of the Supreme Court of Pennsylvania in the instant matter is directly at odds with these principles -- it constitutes an interpretation and application of federal law by a state court, not "as it finds it," but in a manner inconsistent with how this Court and Congress have defined the appropriate remedy in §1983 state tax challenges. Moreover, it guarantees that litigants will receive differing outcomes depending on whether the §1983 action is brought in state or federal court. This adverse result, in conjunction with the inconsistent outcomes among state courts, screams out for this Court's intervention to ensure a uniform treatment of §1983 causes of action, irrespective of the forum in which they are raised.

CONCLUSION

For the foregoing reasons, amici urge this Court to grant the Petition for Writ of Certiorari.

Respectfully submitted,

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